

CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
LINCOLN COMMUNITY MEDICAL LIMITED LIABILITY COMPANY
AND
PARACELTUS HEALTHCARE CORPORATION

I. PREAMBLE

Lincoln Community Medical Limited Liability Company ("Lincoln") agrees to enter into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS"). Paracelsus Healthcare Corporation ("Paracelsus") indirectly owns fifty-one percent (51%) of Lincoln. Lincoln operates Orange County Community Hospital ("OCCH")¹ and Bellwood General Hospital (hereafter referred to as "affected hospitals"). This CIA is intended to provide for the establishment of a Corporate Integrity Program and to implement all reasonable and necessary policies, procedures, and practices to ensure compliance with the terms of this CIA and the requirements of Medicare, Medicaid and all other Federal health care programs,² by all subsidiaries and employees of Lincoln, as well as all third parties with whom Lincoln or the affected hospitals have a contract to act as billing or coding agents. The Corporate Integrity Program is intended to ensure that Lincoln, the affected hospitals, and each of its directors, officers, employees, and contractors maintain the business integrity required of a participant in Medicare, Medicaid, and all other Federal health care programs, and that their claims for reimbursement are in compliance with all statutes and regulations applicable to such programs and with the terms of this CIA as set forth below. On or about this date, Paracelsus and Lincoln are also entering into a settlement agreement with the United States and this CIA is incorporated by reference into that settlement agreement.

As part of this CIA, Paracelsus agrees that it will use its indirect majority ownership of Lincoln to cause Lincoln and all the affected hospitals to comply with the terms of this CIA and that it will do nothing that will interfere with, or diminish, their ability to discharge their obligations.

¹ OCCH has two branches, the Buena Park branch and the Orange branch. As of the execution date of this CIA, the Orange branch is closed and leased to an unrelated third-party, and therefore is not currently within the ambit of this CIA.

² This term, as used throughout this CIA, is defined in 42 U.S.C. § 1320a-7b(f).

II. TERM OF THE AGREEMENT

The period of future compliance obligations assumed under this Agreement shall be five (5) years from the date of execution of this CIA. The effective date will be the date the final signature is obtained on this CIA ("execution date").

The obligations to comply with this Agreement shall end before the expiration of the five-year period in the following circumstances: The Agreement terminates on the date that operations at all the affected hospitals cease, and the provisions of this Agreement applying to any affected hospital terminate on the date that operations at that hospital cease, provided that the closing of the affected hospital(s) is a bona fide closing with no intent to reopen. Should an affected hospital reopen within the period of this CIA, the obligations shall then continue to be imposed as required herein for the duration of the CIA.

III. CORPORATE INTEGRITY PROGRAM

Within one hundred and twenty (120) days of the date of execution of this CIA, Lincoln agrees to implement a Corporate Integrity Program (the "Program") at each of the affected hospitals, which shall include the provisions listed herein.

A. CORPORATE COMPLIANCE COMMITTEE AND CORPORATE COMPLIANCE OFFICER

Lincoln shall appoint a Chief Compliance Officer who shall chair the Compliance Committee and shall be responsible for the day-to-day compliance activities engaged in by Lincoln and the affected hospitals and to further the operations of this Program as well as any reporting obligations created under this CIA. The Compliance Officer shall be a member of the senior management of Lincoln (i.e., not subordinate to the general counsel, CFO, or similar officer).

In addition, for the term of this CIA, Lincoln shall create a Compliance Committee that will be responsible for implementing this Program. The members of the Compliance Committee shall, at a minimum, include the Compliance Officer, top management individuals representing each of the hospitals, Clinical Management, and a member from the Governing Board.

In its one hundred and eighty (180) day interim report, Lincoln shall notify the OIG of the name of the Compliance Officer and the names and titles of each member of the Compliance Committee. If a new Compliance Officer is appointed, Lincoln shall notify the OIG in writing stating the new name, address, and phone number within fifteen (15) days of the change. Any changes to the membership of the Compliance Committee,

including any change in the Compliance Officer, shall be noted in the annual report.

B. REVIEW AND AUDIT OF BILLING POLICIES, PROCEDURES AND PRACTICES

Within the first one hundred and twenty (120) days after execution of this CIA, Lincoln shall retain an independent professional organization, such as an accounting firm, consulting firm, or law firm, with expertise in the anti-kickback statute (42 U.S.C. § 1320a-7b(b)) and the Medicare and Medicaid requirements relating to the coverage and payment of psychiatric services, including the medical necessity requirements for such services. The name of the organization shall be included in the interim report. The independent professional organization shall conduct an annual audit and review, as described below, prior to the first anniversary of the execution date of this CIA, and again prior to the second and fourth anniversaries. If there is a change in the independent professional organization conducting the review and audit, the name of the organization shall be provided to the OIG at least three (3) months prior to the date the annual report is due. Prior to the third and fifth anniversaries, an audit and review, as described below, shall also be performed. However, it may be performed by qualified individuals employed by Paracelsus, Lincoln, or the affected hospitals. All audits and reviews shall cover, at a minimum, the previous twelve month period. With respect to psychiatric services and whether the services were actually provided, the audit shall be based upon a statistically valid random sample taken from OCCH. The review and audit shall provide:

- 1) an analysis of whether the services billed were actually provided;
- 2) whether the psychiatric services billed were medically necessary and were properly billed in accordance with the requirements of the Medicare and Medicaid programs;
- 3) an assessment of whether Lincoln or the affected hospitals are a party to or benefit from any illegal arrangements (e.g., arrangements that violate the anti-kickback statute, 42 U.S.C. § 1320a-7b(b) or the physician self-referral ("Stark") law, 42 U.S.C. § 1395nn), including, but not limited to, whether there were impermissible waivers of co-insurance and deductibles;
- 4) an assessment of the behavior of Lincoln and the affected hospitals to determine whether inaccurate billings or codings to Medicare, Medicaid, and any other Federal health care programs are corrected as soon as they are discovered;
- 5) an assessment of whether the internal controls over its billing procedures are effective;

6) an assessment of whether the requirements of this CIA are being complied with; and

7) an assessment of whether Lincoln and the affected hospitals are working effectively to prevent false billings or codings to Medicare, Medicaid, and any other Federal health care programs or any other violations of the law with respect to these programs.

A representative of the organization that conducted the audit and review shall certify a true and correct copy of its findings and recommendations for submission in the Annual Report. The Corporate Compliance Officer shall also so certify.

C. DUTY TO INVESTIGATE, REPORT, AND CORRECT

If, at any time, Lincoln, the affected hospitals, and/or Paracelsus determines that there are reasonable grounds to suspect that a violation has occurred at Lincoln or the affected hospitals with respect to: a) compliance-related policies and procedures; b) applicable health care statutes, regulations, or policies; or c) this CIA, Lincoln and/or the affected hospital shall conduct an appropriate internal inquiry. If a material billing deficiency is discovered, Lincoln or the affected hospital shall notify the Medicare contractor or the state Medicaid program (as applicable) within thirty (30) days of discovering the deficiency. Lincoln and the affected hospital shall take remedial steps within sixty (60) days of discovering the deficiency to correct the problem, including preventing the deficiency from reoccurring. The notice to the state Medicaid program or the Medicare contractor shall state that the repayment is being made in accordance with the terms of this CIA and shall include: (1) the methodology by which the overpayment was determined; (2) any claim specific information used to determine the overpayment (if applicable); (3) the amount of the overpayment (including interest if required); (4) the appropriate identification number to reflect which entity is submitting the refund and the corresponding payor's name; and (5) the date of the check and check number (or electronic transaction number) on which the overpayment was repaid.

For purposes of this CIA, a "material billing deficiency" shall mean anything that has a significant, adverse financial impact upon the Medicare and/or Medicaid programs. Such material billing deficiency may be the result of an isolated event or a series of occurrences, which lacks conformity with Medicare and/or Medicaid reimbursement principles or other applicable statutes, and the regulations and written directives issued by the state Medicaid programs, the Health Care Financing Administration ("HCFA") and/or its agents, or any other agency charged with administering the health care program implicated and/or its agents.

Contemporaneous to the notifications required above, there shall be a notification sent to

the OIG stating: (1) the findings concerning the material billing deficiency; (2) the actions taken to correct such material billing deficiency, including, but not limited to, proof that any overpayment was refunded (including interest if required); (3) the payor's name, address, and contact person where the overpayment was sent; (4) the amount and specific reason for the overpayment; and (5) any further steps planned to address such material billing deficiency and prevent it from reoccurring.

While this reporting requirement focuses on occurrences having a "significant, adverse financial impact," this provision does not excuse the statutory obligation as a Medicare or Medicaid participant to bring to a payor's attention any other billing deficiencies, however de minimis, to make appropriate refunds and take any steps necessary to prevent the occurrence in the future. These types of billing deficiencies and the corrective action taken shall be reported in the Annual Report.

D. CORPORATE INTEGRITY POLICIES

Within one hundred and twenty (120) days of the execution date of this CIA, Lincoln shall develop and implement written policies for itself and the affected hospitals regarding its commitment to accurate billings consistent with published Medicare and Medicaid regulations and procedures or otherwise communicated by the states, HCFA, or its agents. Specifically, there shall be policies that address the medical necessity requirements with respect to the provision of psychiatric services, the circumstances where waiver of co-insurance and deductibles are prohibited, and prohibitions set forth in the anti-kickback statute (42 U.S.C. § 1320a-7b(b)) and the physician self-referral law (42 U.S.C. § 1395nn). In addition, there shall be procedures implemented that will ensure that all claims are for services rendered and, as applicable, costs incurred. There shall also be policies and procedures reflecting disciplinary guidelines and methods for employees to make complaints and notifications about compliance issues to appropriate personnel through the Confidential Disclosure Program. These policies and procedures shall be updated at least annually and more frequently, as appropriate. The appropriate policies and procedures shall be supplied to each employee and contractor affected by them. Within one hundred and twenty (120) days of the effective date of this CIA, each such employee and contractor shall have executed a certification indicating that they have received, read, and understood the material in the applicable policies and procedures.

These policies shall be adopted by Lincoln's Governing Board. The affected hospitals shall post in a prominent place, accessible to each employee, a notice detailing Lincoln's commitment to comply with all applicable Medicare and Medicaid statutes, regulations and written directives issued in the conduct of their business. A copy of the policies and notice will be available, upon request, for review by OIG.

E. INFORMATION AND EDUCATION PROGRAM

Lincoln shall implement an information and education program. Lincoln shall educate each officer, director, employee, and contractor who is involved directly or indirectly in contracting, billing, coding, or admissions at Lincoln or the affected hospitals (hereafter "covered individuals"). The training shall address: all applicable health care laws including Medicare and Medicaid statutes, regulations and policies, including, but not limited to, the requirements to establish the medical necessity of psychiatric services, the circumstances where routine waiver and co-insurance is prohibited, and the prohibitions set forth in the anti-kickback statute and physician self-referral law; the requirements of this CIA; and the standards of business conduct that such covered individuals are expected to follow and the consequences both to the individuals and the corporation that could ensue from any violation of these requirements. An outline and schedule of the training shall be included in the interim report.

Pursuant to this program, those covered individuals shall receive at least three (3) hours of training annually. The first such training shall be completed within one hundred and twenty (120) days after the effective date of this CIA. Such training shall also be included in the formal orientation of new employees, and shall be completed within thirty (30) days of employment or within one hundred and twenty (120) days after the effective date of this CIA, whichever is later. If, however, the new employee has responsibilities that include contracting, billing, coding, or admissions, there shall be direct supervision over that employee's performance by someone who has had the appropriate training until such time as the new employee has been trained.

A schedule and topic outline of the training shall be included in the Annual Report submitted to OIG. Information concerning the format, dates, and a copy of the materials provided will be available, upon request, for review by OIG.

Lincoln shall continue to obtain, and maintain on file, a certification for each covered individual who has completed the training as set forth in this section. The Compliance Officer shall then certify that such training has been provided to all covered individuals, with a list attached of those individuals who have received the training and signed the certification referenced in this paragraph and paragraph III.D. The Compliance Officer's certification shall be submitted to OIG in the Annual Report.

F. CONFIDENTIAL DISCLOSURE PROGRAM

Within one hundred and twenty (120) days of the execution date, Lincoln shall implement and maintain a tollfree "Hot Line" telephone number, or, with OIG's consent, another form of a confidential disclosure program, for reporting suspected misconduct at Lincoln or the affected hospitals to the Compliance Officer. This confidential disclosure program should

be widely disseminated (e.g., the number should be clearly posted in common areas) at each affected hospital and enable any employee or contractor to disclose any practices or billing procedures alleged by the employee to be inappropriate to a person not in that employee's direct chain of command. Lincoln shall, as part of this disclosure program, require the internal review of any disclosure that is sufficiently specific so that it: (1) permits a determination of the appropriateness of the alleged billing practice; and (2) permits corrective action to be taken and ensures that proper follow-up is conducted. The confidential disclosure program must permit an employee to make a disclosure anonymously and ensure that no retaliatory actions will be taken against employees for utilizing the program, unless such use is done maliciously without any evidence of wrongdoing.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record of each allegation received, a status of the investigation of the allegations, and any corrective action taken in response to the investigation. The Compliance Officer shall maintain all documentation related to information in the log and include a copy of the log in the Annual Report.

G. EMPLOYMENT AND CONTRACTING

Lincoln shall review its hiring and contracting policies to ensure they reflect that Lincoln or the affected hospitals shall not knowingly employ, with or without pay, or enter into a contract or business relationship with, any individual or entity whom Lincoln or the affected hospitals know or should have known: 1) has been convicted of a criminal offense that would trigger an exclusion pursuant to 42 U.S.C. §§ 1320a-7(a) or (b), unless that individual or entity has been reinstated; or 2) is listed by a Federal agency as currently suspended, debarred, excluded or otherwise ineligible for Federal program participation. In order to carry out the policy, Lincoln and/or the affected hospital shall make a reasonable inquiry into the status of any and all current and potential employees, contractors, or consultants. Such a reasonable inquiry shall be made during the hiring process and shall include, at a minimum, a review of the OIG's Cumulative Sanctions Report and the General Services Administration's ("GSA's") List of Parties Excluded from Federal Procurement and Non-Procurement Programs. Among other places, these reports can be found in the "Internet" at www.dhhs.gov/progorg/oig and www.arnet.gov/epls, respectively. As to current employees, contractors and consultants, the inquiry shall be completed within one hundred and twenty (120) days of the execution date of this CIA.

This CIA does not require the termination of employment of any individual who is charged with a criminal offense related to health care, or proposed for debarment or exclusion during their employment, provided, however, that the individual shall be immediately removed from direct responsibility for or involvement in the Medicare, Medicaid, or any other Federal health care program until the resolution of such criminal charges or proposed debarment or

exclusion. For purposes of this Agreement, the term "convicted" shall have the meaning given in 42 U.S.C. § 1320a-7(i).

H. NOTIFICATION OF PROCEEDINGS

To the extent permitted by law, within thirty (30) days of discovery, Lincoln or the affected hospitals shall notify OIG of any search warrant, subpoena, ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that Lincoln or the affected hospitals may have committed a crime or have engaged in fraudulent activities. The notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Lincoln or the affected hospitals shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings.

I. REPORTS

Within one hundred and eighty (180) days of the execution date of this CIA, Lincoln shall submit a report ("Interim Report") that demonstrates that Lincoln and the affected hospitals have complied fully with those requirements that were to be in place and evaluations to be completed within the first one hundred and twenty (120) days of this Program, i.e., as set forth in paragraphs III.A, III.B, III.D, III.E, III.F, and III.G.

Lincoln shall submit annual reports (each one of which is referred to throughout this Agreement as the "Annual Report") to the OIG describing the measures taken to implement the Program and ensure compliance with the terms of this Agreement. The first Annual Report shall be due on October 1, 1999, with each subsequent annual report due on the anniversary date thereto. In accordance with the provisions above, the Annual Report shall include:

1. A summary of the compliance-related activities undertaken during the preceding year and the activities undertaken to comply with the terms of this CIA;
2. A certification from the Compliance Officer that all required policies and procedures have been implemented. Such policies and procedures shall be made available to the OIG upon request;
3. A complete copy of the findings of the reviews and audits conducted of Lincoln and the affected hospitals pursuant to section III.B of this CIA relating to the year covered by the Annual Report, including the appropriate certifications;
4. A brief description of all investigations of alleged billing deficiencies, with a

description of the corrective steps and proof of refund to the appropriate payor (where applicable) and a report of the aggregate amount of overpayments that have been returned to the Medicare and Medicaid programs that were discovered as a direct or indirect result of the compliance program established pursuant to this CIA. The report should include a detailed description of how the overpayments were calculated;

5. A description of the Information and Education Program implemented pursuant to this CIA and a summary of the activities engaged in, in furtherance of this program, including a schedule and topic outline of the training sessions, as well as the Corporate Compliance Officer's certification that all covered individuals attended the training sessions and received and read the applicable policies and procedures. Copies of the training materials should not be submitted unless requested by OIG;
6. A summary of communications (including the number of disclosures by employees and the date of each disclosure) received from the Confidential Disclosure Program established pursuant to section III.F and the results of any internal review and the follow-up on such disclosures;
7. A brief summary of those reports made during the year of subpoenas, search warrants, investigations, or legal proceedings issued, conducted, or brought by a governmental entity involving an allegation that Lincoln or the affected hospitals committed a crime or engaged in fraudulent activities;
8. Any personnel changes regarding the corporate executive officers and directors, the Compliance Committee, or the Compliance Officer that occurred during the preceding year;
9. A description of any personnel action taken as a result of the obligations in the employment and contracting section; and
10. A resolution (or its equivalent) from Lincoln's Governing Board certifying that it has reviewed the Annual Report, has made reasonable inquiry regarding its content and believes upon the inquiry, that the information is correct and truthful.

Where applicable, the Annual Report shall include a statement that, to the best of Lincoln's knowledge, no events subject to the reporting requirements identified above occurred. To the extent feasible, and at OIG's option, OIG may choose to review the documentation relating to the Annual Report on the premises of the affected hospitals or any other Paracelsus or Lincoln facility.

IV. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, contract or pursuant to this Agreement, OIG or its duly authorized representative(s) may examine books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (i) Lincoln's compliance with the terms of this Agreement (including compliance by the affected hospitals); and (ii) compliance with the requirements of the Medicare, Medicaid and all other Federal health care programs. The documentation described above shall be made available by Paracelsus, Lincoln, or the affected hospitals at all reasonable times on reasonable advance notice for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its authorized representative(s) may interview any employee of Paracelsus, Lincoln, or the affected hospitals who consents to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. Paracelsus, Lincoln, and the affected hospitals agree to assist OIG in contacting and arranging interviews with such employees upon OIG's request. The employees may elect to be interviewed with or without a representative of Paracelsus, Lincoln, or the affected hospitals present; however, employees have a right to have such representation present.

V. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise agreed to subsequent to the execution of this Agreement, all notifications and reports required under the terms of this CIA shall be submitted to the entities listed below:

ATTN: Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, S.W.
Cohen Building, Room 5527
Washington, D.C. 20201
Ph. (202)619-2078
Fax (202)205-0604

ATTN: Suzanne Miskin
Vice-President, Corporate Compliance
Paracelsus Healthcare Corporation
Suite 800
515 West Greens Road
Houston, Texas 77067
Ph. (281)774-5370
Fax (281)774-5470

VI. DOCUMENT AND RECORD RETENTION

Lincoln and the affected hospitals shall maintain for inspection documents and records relating to this CIA and reimbursement from the Medicare, Medicaid, and other Federal health care programs for six (6) years, i.e., one (1) year longer than the duration of this CIA, unless required by law to retain such records for a longer period of time.

VII. BREACH AND DEFAULT PROVISIONS

Compliance with the terms and conditions in this CIA shall constitute an element of the present responsibility of Paracelsus, Lincoln, and the affected hospitals with regard to participation in Federal health care programs. Full and timely compliance by Paracelsus, Lincoln, and the affected hospitals shall be expected throughout the duration of this CIA with respect to all of the obligations agreed to herein. As stated below in sections VII.B(2) and XII.C of this CIA, any and all modifications (including changes to dates on which an obligation is due to be met) shall be requested in writing and agreed to by OIG in writing prior to the date on which the modification is expected to take effect.

A. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN OBLIGATIONS

As a contractual remedy, Paracelsus, Lincoln, the affected hospitals, and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "stipulated penalties") in accordance with the following provisions:

- (1) A stipulated penalty of \$1,500 (which shall begin to accrue on the day after the obligation became due) for each day Lincoln and the affected hospitals fail to have in place any of the following during the entire period, beginning with the date, set forth in this CIA, that such requirements must be met, and concluding at the end of the period required by this CIA:
 - a. a Compliance Officer;
 - b. written policies and procedures;
 - c. an education and training program;
 - d. a mechanism for obtaining compliance audits and reporting material deficiencies; and
 - e. a Confidential Disclosure Program;
- (2) A stipulated penalty of \$1,500 (which shall begin to accrue on the day after the obligation became due) for each day Lincoln fails meet the deadline set forth above to provide a written interim report and the annual reports;

- (3) A stipulated penalty of \$1,500 (which shall begin to accrue on the day after the failure to comply began) for each day Lincoln or the affected hospitals employ or contract with an individual after that individual has been listed by a Federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program. This stipulated penalty shall not be demanded if Lincoln or the affected hospital can demonstrate that they did not discover the individual's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.G) as to the current or potential status of the employee or consultant engaged;
- (4) A stipulated penalty of \$1,500 (which shall begin to accrue five (5) business days after the OIG provides notice of the failure to comply) for each day Lincoln or the affected hospital fail to comply with any requirement in this CIA where the failure to comply does not form the basis for stipulated penalties under provisions (1), (2), or (3) above.

Paracelsus may become independently liable for such penalties if it engages in actions or omissions that cause the above failures to occur.

B. PAYMENT OF STIPULATED PENALTIES

(1) Upon finding that Paracelsus, Lincoln, and/or the affected hospitals have failed to comply with any of the obligations described in section VII.A and determining that stipulated penalties are appropriate, the OIG shall provide notification by certified mail of: (a) the failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the stipulated penalties (this notification is hereinafter referred to as the "Demand Letter"). Within fifteen (15) days of the date of the Demand Letter, Lincoln shall either: (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section VII.D. Failure to perform either of the above requirements shall constitute a material breach of this CIA.

(2) The affected party(ies) may submit a timely written request for an extension of time to perform any act or file a notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request, stipulated penalties shall not begin to accrue unless and until the affected party(ies) fails to meet the deadline granted by the extension. Notwithstanding any other provision in this section, if OIG denies a timely written request, stipulated penalties shall not begin to accrue until two (2) business days following the receipt of OIG's written denial of such an extension. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or notification or report is due to be filed.

(3) Payment of the stipulated penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to the OIG at the address set forth in section V.

(4) Except as otherwise noted, these provisions for payment of stipulated penalties shall not affect or otherwise set a standard for the OIG's determination that Lincoln or the affected hospitals have materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section VII.C.

C. REMEDIES FOR MATERIAL BREACH OF THIS AGREEMENT

The parties agree that a material breach of this CIA by Paracelsus, Lincoln, or the affected hospitals constitutes an independent basis for exclusion of the breaching entity from participation in Medicare, Medicaid, and all other Federal health care programs. Upon a determination by OIG that there has been a material breach of this Agreement, OIG shall notify the appropriate entity(ies) of the alleged material breach and the OIG's intent to exercise its contractual right to impose an exclusion (this notification is hereafter referred to as the "Notice of Material Breach and Exclusion Letter"). The affected individual and/or entity shall have thirty-five (35) days from the date of the letter to proceed as follows:

1. cure the alleged material breach; or
2. demonstrate to the OIG's satisfaction that: (a) there is full compliance with this Agreement; or (b) the material breach cannot be cured within the thirty-five (35) day period, but that the individual or entity has taken action to cure the material breach, and such action is being pursued with due diligence, with a reasonable timetable, agreed to by the parties, for curing the material breach.

If at the conclusion of the thirty-five (35) day period, there is a failure to cure the material breach to OIG's satisfaction or to demonstrate either one of the requirements in provision C.2. above, the affected entity shall be notified of OIG's determination to exclude as a result thereof (this letter shall be referred to hereinafter as the "Exclusion Letter"). This shall be an exclusion from participation in the Medicare, Medicaid, and any other Federal health care programs. The exclusion shall have national effect as to the breaching entity and will also apply to all other Federal procurement and non-procurement programs.

For purposes of this section, a "material breach" means: (1) a failure to report a material billing deficiency, take corrective action and pay the appropriate refunds, as required in section III of this CIA; (2) a failure to perform the audit and review requirements as set forth in section III; or (3) other repeated or flagrant violations of the obligations under this CIA, including, but not limited to the obligations addressed in section VII.A.

In connection with the OIG's determination to exclude pursuant to this provision, the affected entity shall have the right to dispute the OIG's determination in accordance with the agreed upon provisions set forth in section VII.D of this CIA.

D. DISPUTE RESOLUTION

Upon OIG's delivery of its Demand Letter or of its Exclusion Letter, and as an agreed upon contractual remedy for the resolution of disputes arising under the obligations of this Agreement, the affected entity shall be afforded some review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the stipulated penalties or exclusion sought pursuant to this CIA. Specifically, the OIG's determination to demand payment of stipulated penalties or to seek exclusion shall be subject to review by an HHS ALJ and the Departmental Appeals Board ("DAB") in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this CIA shall be: (1) whether there was full and timely compliance with the obligations of this CIA for which the OIG demands payment; and (2) the period of noncompliance. Paracelsus, Lincoln and/or the affected hospital(s) shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. For purposes of paying stipulated penalties under this CIA, and if the affected party chooses to seek review in lieu of curing the breach and paying the stipulated penalties, as set forth above, the ALJ's decision shall trigger the obligation to pay. Thus, payment will be due twenty (20) days after the date that the ALJ issues the decision. An election of the contractual right to appeal to the DAB shall not excuse its obligation to make payment upon issuance of the ALJ's decision.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a breach of this Agreement shall be: (1) whether there was material breach of one or more of the obligations under this CIA; (2) whether such breach was continuing on the date of the Intent to Exclude Letter; and (3) whether there was a failure to cure the material breach within the time frames agreed upon by the parties. For purposes of the exclusion herein agreed to in the event of breach of this CIA, the ALJ's decision shall be deemed to make the exclusion effective if the ALJ finds in favor of the OIG and the exclusion may then be implemented, regardless of any appeal pending, twenty (20) days after the date of the ALJ's decision. Reinstatement shall be governed by 42 C.F.R. §§ 1001.3001-1001.3004.

The review by an ALJ provided for above shall not be considered to be an appeal right arising under any statutes or regulations. However, the parties also agree that the ALJ's decision may be appealed to the DAB, which then shall be the final decision. Consequently, the parties to this CIA agree that they waive any right they may have to appeal either administratively or judicially or otherwise to any court or other adjudicative forum.

All notices required under any of the aforementioned proceedings shall be given to the OIG in accordance with section V of this CIA.

VIII. ACQUISITION COMPLIANCE

In the event that the Orange branch is reopened or Lincoln purchases or establishes new business units or hospitals after the effective date of this CIA, it shall notify OIG of this fact within thirty (30) days of the date of purchase or establishment. Lincoln shall implement all applicable provisions of this CIA, including any training or education requirements, within one hundred and twenty (120) days following such purchase or establishment.

IX. COSTS RELATED TO ADDITIONAL AUDITS

In addition to the obligations assumed by Lincoln and the affected hospitals under this CIA, if the OIG determines that it is necessary to conduct an independent audit or review to determine whether or to the extent to which Lincoln and the affected hospitals are complying, if at all, with its obligations under this CIA, Paracelsus, Lincoln, and the affected hospitals agree to pay for the reasonable cost of any such audit or review by the OIG or any of its designated agents.

X. CONFIDENTIALITY

The confidentiality of all documents and other information provided by Paracelsus, Lincoln, or the affected hospitals in connection with its obligations under this CIA shall be maintained by the OIG except to the extent disclosure is required by law. Nothing in this CIA shall be construed to prohibit the OIG from providing information to any other department or agency of the United States Government, or its representatives or agents or to any State, provided that any such entity receiving such information shall be advised by the OIG of the confidentiality provisions of this CIA. The OIG recognizes that certain information submitted to it under this CIA may constitute trade secrets or confidential commercial or financial information within the meaning of section 552(b) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4). Paracelsus, Lincoln, and the affected hospitals shall identify all records that they contend falls within this section. To the extent the OIG determines that records submitted fall within the ambit of this exemption, OIG agrees to follow its pre-disclosure notification procedures set out in 45 C.F.R. § 5.65 with respect to such records. These procedures include prior notice to the designated person within Lincoln (as provided in section V) of any potential release of records under the FOIA and an opportunity to provide information as to why the information is exempt under 5 U.S.C. § 552(b)(4). Lincoln will

also be given advance notice to the address set forth herein, if OIG decides that any such information is not exempt under section 552(b)(4). Paracelsus, Lincoln, and the affected hospitals shall designate documents as subject to such an exemption only if such is the case.

XI. COMPLIANCE BY PURCHASER

If Paracelsus sells or disposes of one or both of the affected hospitals or of its 51% holding in Lincoln, the purchaser ("Purchaser") shall be notified of this CIA and shall certify its agreement to abide by its terms and conditions.

- A. Paracelsus shall cooperate with the Purchaser to assure an orderly transition of the CIA. Such cooperation shall include, but not be limited to, providing Purchaser with a copy of any compliance manuals, policies and procedures, training materials, and other similar materials used to implement the CIA and assisting the Purchaser in retaining an independent professional organization, as set forth in Section III.C of the CIA;
- B. The effective date of the CIA, as set forth in Section II, shall not be extended by reason of said purchase;
- C. The period for document and record retention, as set forth in Section VI of the CIA, shall not be extended by reason of said purchase.
- D. In the event of a material change in the services provided at the covered facilities as a result of a purchase, the OIG will consider any request by the Purchaser to modify the CIA to reflect the change.

XII. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the settlement agreement pursuant to which this CIA is entered, and into which this CIA is incorporated, Paracelsus, Lincoln, and the OIG agree as follows:

- A. This CIA shall be binding on the successors, assigns and transferees of Paracelsus, Lincoln, or either of the affected hospitals;
- B. This CIA shall become final and binding when signed by all of the parties;
- C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and
- D. The undersigned Paracelsus and Lincoln signatories represent and warrant that they are authorized to execute this CIA. The undersigned United States signatory represents that he is signing this CIA in his official capacity and that he is authorized

to execute this CIA.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

PARACELUS AND LINCOLN

Dated: 9-2-98

By: 

James G. VanDevender
Senior Executive Vice President
Chief Financial Officer
Paracelsus Healthcare Corporation

Dated: _____

By: _____

Louis Rubino
Vice President of the Board of
Managers
Lincoln Community Medical Limited
Liability Company

Reviewed as to form and content

Dated: _____

By: _____

Andrew N. Vollmer
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Provider Number: 050253

to execute this CIA.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

PARACELsus AND LINCOLN

Dated: _____

By: _____

James G. VanDevender
Senior Executive Vice President
Chief Financial Officer
Paracelsus Healthcare Corporation

Dated: 9/4/98

By: Louis Rubino

Louis Rubino
Vice President of the Board of
Managers
Lincoln Community Medical Limited
Liability Company

Reviewed as to form and content

Dated: _____

By: _____

Andrew N. Vollmer
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Provider Number: 050253

to execute this CIA.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

PARACELSUS AND LINCOLN

Dated: _____

By: _____

James G. VanDevender
Senior Executive Vice President
Chief Financial Officer
Paracelsus Healthcare Corporation

Dated: _____

By: _____

Louis Rubino
Vice President of the Board of
Managers
Lincoln Community Medical Limited
Liability Company

Reviewed as to form and content

Dated: 3 September 1998


By: Andrew N Vollmer

Andrew N. Vollmer
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Provider Number: 050253

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dated: 9/2/98

By: 
Lewis Morris
Assistant Inspector
General for Legal Affairs